THE HON'BLE MR JUSTICE J.CHELAMESWAR

and

THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 16150 of 2005

DATE: 22ND AUGUST, 2005

Between:

Ch.Bojji Babu, S/o.Sreerama Rao,
(TR&B) Department, R/o.Hyderabad.

..... PETITIONER

AND

1 Government of Andhra Pradesh rep. its Secretary, Transport, Roads and buildings Department, Secretariat, Hyderabad.
Hyderabad. & others.

.....RESPONDENT(S)

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and

THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 16150 of 2005

ORDER: (per Sri J. Chelameswar,J)

The writ petition is filed with a prayer as follows:

> "For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, order, or direction by declaring the G.O. Rt. No. 689 and G.O.Rt. No.690, dated 20.7.2005, TR&B (Ser-I) Department, Government of Andhra Pradesh, as void and unconstitutional and set aside the same and pass such other orders as may be deemed fit in the circumstances of the case."

The writ petitioner along with some others filed O.A. No.6409 of 2004 before the A.P. Administrative Tribunal for a direction to the respondent therein to recast the seniority list by placing the names of the applicants at appropriate places basing on the ranking assigned by the A.P.P.S.C. in accordance with the full bench judgment of the Hon'ble Tribunal which was confirmed by the Hon'ble High Court in W.P. No.17497/99 and Batch, dated 21.11.2003 by declaring the action of the respondents in not extending the benefit to the applicants as illegal, arbitrary, vindictive, violation of articles 14, 16 and 21 of the Constitution of India.

The Administrative Tribunal by its order dated 25.11.2004 disposed of the said O.A. with certain directions. The details of which are not necessary for the present. Aggrieved by the directions issued by the Administrative Tribunal, a writ petition was filed, namely, Writ Petition No. 13109 of 2005 by three persons who were not parties to the above O.A., but, who claimed that the order in the O.A. would adversely affect their interests. While admitting the said writ petition, by an order dated 4.7.2005 in W.P.M.P. No. 16658 of 2005, this Court granted interim direction to maintain status-quo obtaining as on that day.

By the order dated 20.7.2005 in G.O. Ms. Nos. 689 and 690, the 1st respondent herein posted the respondents 2 and 3 herein, one as in-charge member of the Commissionerate of Tenders and another as the in-charge Chief Engineer & Managing Director, A.P. Road Development Corporation. Challenging the said orders, the present writ petition is filed on the ground that such orders were in violation of the status-quo orders granted earlier on 4.7.2005 as the petitioners and respondents in the above mentioned writ petition No. 13109 of 2005, all belong to the same category of Superintending Engineers.

Irrespective of the fact whether the in-charge arrangement such as the one made under the G.Os., impugned herein would tantamount to violation of the status-quo order dated 4.7.2005 or not, we are afraid that the writ petition is not maintainable. If the impugned Government Orders are believed by the petitioner to be orders in violation of the interim order dated 4.7.2005, the remedy of the petitioner is not in moving a fresh writ petition. If the impugned orders are questioned on any other grounds other than the ground that it violates the above mentioned interim order, the grievance of the petitioner does not merit consideration of this Court as a Court of first instance, in view of the law declared by the Supreme Court in L. CHANDRA KUMAR vs. UNION OF INDIA & OTHERS ().

However, the learned counsel for the petitioners, Sri K.V. Satyanarayana argued that the writ petition is still maintainable. The learned counsel argued that the principle laid down in Chandra Kumar's case (cited supra-1) is not an absolute principle, but, in exceptional situations, a petitioner can approach this Court as a Court of first instance without first approaching the concerned Administrative Tribunal. Learned counsel placed reliance on the judgment of the Supreme Court in T.K. RANGA RAJAN vs. GOVERNMENT OF TAMIL NADU & OTHERS (). No doubt, in the said judgment, the Supreme Court did lay down that the principle laid down in Chandra Kumar's case (cited supra-1) is not an absolute principle debarring the approach to a High Court as a Court of first instance. But, however, the Supreme Court held that such an approach is limited. The Supreme Court held that "in very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions".

Even if we assume that Rangarajan's case(cited supra-2) lays down the exceptions to the general principle laid down in Chandra Kumar's case (cited supra-1), we do

not agree with the submission of the learned counsel for the petitioner that the present case is such an exceptional case, which calls for the examination of this Court in exercise of its jurisdiction under Article 226, as a Court of first instance, in service disputes between the State and its employees.

In the alternative, the learned counsel for the petitioner argued that in view of the status-quo order passed earlier in another writ petition, it is only this Court that has jurisdiction to decide the present lis. Learned counsel also placed reliance upon the judgment of the Supreme Court in MULRAJ vs. MURTI RAGHUNATHJI (). It was a case where under the U.P. (Temporary) Control of Rent and Eviction Act, 1947, prior permission of a designated authority was required before a suit for eviction was instituted. The landlord filed an application seeking such a permission before the competent authority (First Class Magistrate). The tenant sought transfer of the said application to another Court by making an application to the District Magistrate. Pending consideration of such transfer application, the District Magistrate stayed further proceedings before the competent authority. However, the order of stay granted by the District Magistrate was not communicated to the competent authority before whom the application for permission to file suit for eviction was pending. Therefore, the competent authority granted appropriate permission and based on such permission, a suit for eviction was filed. In the suit, the question arose, whether the permission granted to sue for eviction was competent in law and if it is incompetent permission, whether the suit was maintainable. It is in this background, the Supreme Court observed as follows:

> "Obviously when the appellate court orders stay of execution the order can have effect only when it is made known to the executing court. We cannot agree that an order staying execution is similar to an order allowing an appeal and quashing the execution proceedings. In the case where the execution proceeding is quashed, the order takes effect immediately and there is nothing left to execute. But where a stay order is passed, execution still stands and can go on unless the court executing the decree has knowledge of the stay order. It is only when the executing court has knowledge of the stay order that the court must stay its hands and anything it does thereafter would be a nullity so long as the stay order is in force."

It was by way of an illustration, the Supreme Court made those observations while examining the scope of a stay order granted by a superior Court or Tribunal.

The essence appears to be that any such interim order passed by the superior Tribunal or Court would not affect the legality of any order passed by the Court or Tribunal subordinate to the Court, without knowledge of the interim order referred to earlier.

In our view, the issue involved in the present case is wholly different. As already pointed out, if it is the case of the petitioner that there is violation of the interim order granted earlier by this Court, his remedy is not in filing a separate fresh writ petition. The decision relied upon by the learned counsel for the petitioner in Mulraj's case (cited supra-3), in our respectful view, has no application to the facts of the present case.

We see no merits in the writ petition. The writ petition is accordingly dismissed at the admission stage. No costs.

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J. CHELAMESWAR,J

DATE: 22nd August, 2005

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M. VENKATESWARA REDDY,J

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